



DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 211217-0262; RTID 0648-XX072]

**Fisheries of the Northeastern United States; 2022 and Projected 2023 Summer
Flounder, Scup, and Black Sea Bass Specifications**

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: NMFS announces 2022 and projected 2023 specifications for the summer flounder, scup, and black sea fisheries. The implementing regulations for the Summer Flounder, Scup, and Black Sea Bass Fishery Management Plan require us to publish specifications for the upcoming fishing year for each of these species. This action is intended to inform the public of the specifications for the start of the 2022 fishing year for summer flounder, scup, and black sea bass.

DATES: This rule is effective January 1, 2022.

ADDRESSES: A Supplemental Information Report (SIR) was prepared for the 2022-2023 summer flounder, scup, and black sea bass specifications. Copies of the SIR are available on request from Dr. Christopher M. Moore, Executive Director, Mid-Atlantic Fishery Management Council, Suite 201, 800 North State Street, Dover, DE 19901. The SIR is also accessible via the Internet at https://www.mafmc.org/s/SFSBSB_2022-2023_specs_SIR_final.pdf.

FOR FURTHER INFORMATION CONTACT: Emily Keiley, Fishery Policy Analyst, (978) 281-9116.

SUPPLEMENTARY INFORMATION:

General Background

The Mid-Atlantic Fishery Management Council (Council) and the Atlantic States Marine Fisheries Commission (Commission) cooperatively manage the summer flounder, scup, and black sea bass fisheries. The Summer Flounder, Scup, and Black Sea Bass Fishery Management Plan (FMP) outlines the Council's process for establishing specifications. The FMP requires NMFS to set an acceptable biological catch (ABC), annual catch limit (ACL), annual catch targets (ACT), commercial quotas, recreational harvest limit (RHL), and other management measures, for each species for 1 to 3 years at a time. This action implements 2022 and projects 2023 ABCs, as well as the recreational and commercial ACLs, ACTs, commercial quotas, and RHLs for all three species, consistent with the recommendations made by the Commission's Summer Flounder, Scup, and Black Sea Bass Board (Board) and the Council at their joint August 2021 meeting.

The Scientific and Statistical Committee (SSC) met on July 22, 2021, to review the results of the 2021 management track stock assessments and recommend 2022 and 2023 ABCs for all three species; specific recommendations are discussed below.

Final 2022-2023 Specifications

Summer Flounder Specifications

This action approves the Council and Board recommended 2022-2023 summer flounder catch and landings limits as shown in Table 1. The recommendations are based on the most recent (2021) stock assessment and the application of the Council's risk policy. For summer flounder, this results in a 22-percent increase in the recommended 2022 and 2023 ABC over the 2021 ABC. The proposed rule (November 24, 2021; 86 FR 67014) and Section 5.2 of the Council's SIR provides information on how the specifications were calculated.

Table 1 -- Summary of 2022 and Projected 2023 Summer Flounder Fishery Specifications

Specifications	Mil lb	Metric Ton
Overfishing Limit (OFL)	2022: 36.28 2023: 34.98	2022: 16,458 2023: 15,865
ABC	33.12	15,021
Commercial ACL = ACT	18.48	8,382
Commercial Quota	15.53	7,046
Recreational ACL = ACT	14.64	6,639
RHL	10.36	4,697

The final state summer flounder commercial quotas take into account any overages that occurred during the 2020 or current fishing year, through October 31, as described at 50 CFR 648.103(b)(2). The final 2022 state-by-state summer flounder commercial quotas are provided in Table 2.

Table 2 -- Final 2022 Summer Flounder State-by-State Commercial Quotas

State	Final 2022 Quotas (lb)	Final 2022 Quotas (mt)
ME	24,488	11.11
NH	19,990	9.07
MA	1,391,846	631.33
RI	2,238,216	1015.24
CT	956,043	433.65
NY	1,470,779	667.13
NJ	2,337,728	1060.38
DE	-19,173	-8.70
MD	935,226	424.21
VA	2,776,242	1259.28
NC	3,361,569	1524.78
Total	15,512,127	7036.18

Note: Summed not including Delaware.

This action makes no changes to the current commercial management measures, including the minimum fish size (14-inch (36-cm) total length), gear requirements, and possession limits. Changes to 2022 recreational management measures (bag limits, size limits, and seasons) are not considered in this action but will be considered by the Board and Council later this year when additional data are available for 2021.

Black Sea Bass Specifications

This action approves the Council and Board recommended 2022-2023 black sea bass catch and landings limits as shown in Table 3. The recommendations are based on the most recent (2021) stock assessment and the application of the Council’s risk policy. This results in a 2022 black sea bass ABC that is an 8-percent increase compared to 2021 and a projected 2023 ABC that is a 5-percent decrease compared to 2021. The proposed rule and Section 5.2 of the Council’s SIR provides information on how the specifications were calculated.

Table 3 – 2022 and Projected 2023 Black Sea Bass Catch and Landings Limits

Specifications	2022		2023	
	Mil lb.	Metric Ton	Mil lb.	Metric Ton
OFL	19.26	8,735	17.01	7,716
ABC	18.86	8,555	16.66	7,557
Expected Commercial Discards	3.63	1,649	3.21	1,456
Expected Recreational Discards	2.02	917	1.79	810
Commercial ACL = ACT	10.10	4,583	8.93	4,048
Commercial Quota	6.47	2,934	5.71	2,592
Recreational ACL = ACT	8.76	3,972	7.74	3,509
RHL	6.74	3,055	5.95	2,699

This action does not change the 2022 commercial management measures for black sea bass, including the commercial minimum fish size (11-inch (27.94-cm) total length) and gear requirements.

Scup Specifications

This action approves the Council and Board recommended 2022-2023 scup catch and landings limits as shown in Table 4. The recommendations are based on the most recent (2021) stock assessment and the application of the Council’s risk policy. This results in a 2022 ABC that is 8 percent less than the 2021 ABC; the projected 2023 ABC is 15 percent less than the 2021 ABC. The proposed rule and Section 5.2 of the Council’s SIR provides information on how the specifications were calculated.

Table 4 – 2022 and Projected 2023 Scup Catch and Landings Limits

Specifications	2022		2023	
	Mil lb.	Metric Ton	Mil lb.	Metric Ton
OFL	32.56	14,770	30.09	13,648
ABC	32.11	14,566	29.67	13,460
Expected Commercial Discards	4.67	2,117	5.28	2,394
Expected Recreational Discards	0.99	447	1.12	506
Commercial ACL = ACT	25.05	11,361	23.15	10,499
Commercial Quota	20.38	9,245	17.87	8,105
Recreational ACL = ACT	7.06	3,205	6.53	2,961
RHL	6.08	2,757	5.41	2,455

The commercial scup quota is divided into three commercial fishery quota periods, as outlined in Table 5.

Table 5 -- Commercial Scup Quota Allocations for 2022 by Quota Period

Quota Period	Percent Share	lb	mt
Winter I	45.11	9,194,201	4,170
Summer	38.95	7,938,686	3,601
Winter II	15.94	3,248,849	1,474
Total	100.0	20,381,736	9,245

The current quota period possession limits are not changed by this action and are outlined in Table 6.

Table 6 -- Commercial Scup Possession Limits by Quota Period

Quota Period	Percent Share	Federal Possession Limits (Per Trip)	
		lb	kg
Winter I	45.11	50,000	22,680
Summer	38.95	N/A	N/A
Winter II	15.94	12,000	5,443
Total	100.0	N/A	N/A

The Winter I possession limit will drop to 1,000 lb (454 kg) when 80 percent of that period's allocation is landed. If the Winter I quota is not fully harvested, the remaining quota is transferred to Winter II. The Winter II possession limit may be adjusted (in association with a transfer of unused Winter I quota to the Winter II period)

via notification in the **Federal Register**. The regulations specify that the Winter II possession limit increases consistent with the increase in the quota, as described in Table 7.

Table 7 -- Potential Increase in Winter II Possession Limits based on the Amount of Unused Scup Rolled over from Winter I to Winter II

Initial Winter II Possession Limit		Rollover from Winter I to Winter II		Increase in Initial Winter II Possession Limit		Final Winter II Possession Limit after Rollover from Winter I to Winter II	
lb	kg	lb	kg	lb	kg	lb	kg
12,000	5,443	0-499,999	0-226,796	0	0	12,000	5,443
12,000	5,443	500,000-999,999	226,796-453,592	1,500	680	13,500	6,123
12,000	5,443	1,000,000-1,499,999	453,592-680,388	3,000	1,361	15,000	6,804
12,000	5,443	1,500,000-1,999,999	680,389-907,184	4,500	2,041	16,500	7,484
12,000	5,443	2,000,000-2,500,000*	907,185-1,133,981	6,000	2,722	18,000	8,165

*This process of increasing the possession limit in 1,500-lb (680-kg) increments would continue past 2,500,000 lb (1,122,981 kg), but we end here for the purpose of this example.

This action does not change the 2022 commercial management measures for scup, including the minimum fish size (9-inch (22.9-cm) total length), gear requirements, and quota period possession limits. As with summer flounder and black sea bass, potential changes to the recreational measures (bag limits, size limits, and seasons) for 2022 will be considered later this year when additional data are available for 2021.

Comments and Responses

We received one comment on the proposed rule (November 24, 2021; 86 FR 67014). The comment was from the State of New York and the New York State Department of Environmental Conservation (hereinafter referenced as “New York”). New York’s comment comprises a cover letter and seven attachments. The attachments were the comment letters and supporting documents that New York previously submitted

in response to the proposed rule for the 2020-2021 Summer Flounder, Scup, Black Sea Bass, and Bluefish Specifications (84 FR 36046; July 26, 2019) and the proposed rule for Amendment 21 to the FMP (85 FR 48660; August 12, 2020). Similar to arguments made in ongoing litigation, New York contends that the revised allocations and resulting quotas are not in accordance with Magnuson-Stevens Act's National Standards 2, 4, 5, and 7. NMFS' responses to New York's previously submitted comments can be found in the final rules for those two actions (84 FR 54041; October 9, 2019, and 85 FR 80661; December 14, 2020) and are not repeated here. The state commercial summer flounder allocation formula is established in the regulations at 50 CFR 648.102(c), and as such must be followed in setting the quotas in this specifications action. Deviating from this formula would require a rulemaking to modify the current regulations, which is beyond the scope of this action.

Changes from the Proposed Rule

As described in the proposed rule, the summer flounder specifications in this final rule incorporate overage information to calculate the final state quotas that was not available previously.

Classification

Pursuant to section 304(b)(3) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined that this final rule is consistent with the Summer Flounder, Scup, and Black Sea Bass FMP, other provisions of the Magnuson-Stevens Act, and other applicable law.

The Assistant Administrator for Fisheries finds that the need to implement these measures in a timely manner constitutes good cause, under the authority contained in 5 U.S.C. 553(d)(3), to waive the 30-day delay in effective date of this action. This action implements 2022 specifications for the summer flounder, scup, and black sea bass fisheries. These specifications should be effective by the start of the fishing year on

January 1, 2022, and must be published on or before December 31, 2021.

This rule is being issued at the earliest possible date. Preparation of the proposed rule was dependent on the Council's submission of the SIR. NMFS received the final version of the SIR on November 5, 2021. Preparation of the final rule is also dependent on the analysis of commercial summer flounder landings for the prior fishing year (2020) and the current fishing year through October 31, 2021, to determine whether any overages have occurred and adjustments are needed to the final state quotas. This process is codified in the summer flounder regulations and, therefore, cannot be performed earlier. Annual publication of the summer flounder quotas prior to the start of the fishing year, by December 31, is required by Court Order in *North Carolina Fisheries Association v. Daley*.

The 30-day delay in implementation for this rule is also unnecessary because this rule contains no new measures (*e.g.*, requiring new nets or equipment) for which regulated entities need time to prepare or revise their current practices.

This final rule is exempt from review under Executive Order 12866.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration during the proposed rule stage that this action would not have a significant economic impact on a substantial number of small entities. The factual basis for the certification was published in the proposed rule and is not repeated here. No comments were received regarding this certification. As a result, a regulatory flexibility analysis was not required and none was prepared.

This final rule contains no information collection requirements under the Paperwork Reduction Act of 1995.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: December 17, 2021.

Samuel D. Rauch, III,

Deputy Assistant Administrator for Regulatory Programs,

National Marine Fisheries Service.

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